

Message Text

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ORIGIN ARA-20

INFO OCT-01 ISO-00 EB-11 TRSE-00 L-03 SS-20 NSC-07 AGR-20

CIAE-00 COME-00 INR-11 LAB-06 NSAE-00 RSC-01 SP-03

STR-08 SWF-02 CIEP-03 FRB-03 OMB-01 SSO-00 NSCE-00

INRE-00 /120 R

DRAFTED BY ARA/BR:JSLATTERY:SC

APPROVED BY ARA:WGBOWDLER

ARA/BR:RJBALLANTYNE

EB:MGLITMAN

TREASURY:PSUCHMAN (SUBSTANCE)

----- 015101

O 040141Z SEP 74

FM SECSTATE WASHDC

TO AMEMBASSY BRASILIA IMMEDIATE

INFO AMCONSUL RIO DE JANEIRO IMMEDIATE

C O N F I D E N T I A L STATE 193339

E.O. 11652: GDS

TAGS: ETRD, EFIN, BR

SUBJECT: COUNTERVAILING DUTY CASE

REF: BRASILIA 6636

1. TREASURY DEPUTY ASST. SEC. SUCHMAN EXPLAINED TO DEPT. SEPT. 3 THAT DECISION ON RATES OF COUNTERVAILING DUTY TO BE APPLIED TO BRAZILIAN FOOTWEAR REACHED BY TREASURY ONLY LATE AFTERNOON FRIDAY, AUGUST 30. DECISION WAS TO IMPOSE COUNTERVAILING DUTY TO MULTIPLE RATES AS DESCRIBED IN PARAGRAPH 3 BELOW. THIS IS FIRST TIME SUCH APPROACH WOULD BE USED BY TREASURY IN COUNTERVAILING AGAINST EXPORT SUBSIDIES, BUT BRAZILIAN SYSTEM IS ONLY ONE OF ITS KIND IN TREASURY'S EXPERIENCE TO DATE.

2. IN LIGHT YOUR RECENT REPORTING, AS WELL AS DIRECT CONVERSATION WITH MINISTRY OF FINANCE INITIATED BY ARY PINTO
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AND DESCRIBED IN REFTTEL, TREASURY HAS REVIEWED ITS DECISION

BUT BELIEVES THAT MULTIPLE RATE SYSTEM BEST FULFILLS REQUIREMENTS OF OUR LEGISLATION WHILE AT SAME TIME COMES CLOSEST TO ACCOMMODATING GOB INTERESTS. TREASURY EXAMINED POSSIBILITY OF AVERAGE SINGLE RATE BUT, MINDFUL THAT ITS DECISION MUST STAND TEST OF COURT CASE, REJECTED THIS ALTERNATIVE AS NOT SATISFYING LEGAL REQUIREMENTS. THUS, ONLY ALTERNATIVES WHICH TREASURY BELIEVES ARE VIABLE FROM STANDPOINT OF OUR LAW ARE AS FOLLOWS: (1) APPLY SINGLE DUTY EQUIVALENT TO MAXIMUM AMOUNT OF SUBSIDY ENCOUNTERED DURING INVESTIGATION, I.E. 12.3 PERCENT OR, (2) APPLY

MULTIPLE RATES EQUIVALENT TO SUBSIDY RECEIVED AS DESCRIBED PARAGRAPH 3. THIRD ALTERNATIVE WOULD BE TO SUSPEND FINAL DETERMINATION OF CUSTOMS PAYMENTS PENDING CALCULATION OF BOUNTY OR GRANT. SINCE THIS APPROACH MIGHT NOT ALLOW COLLECTION OF THE DUTY AND FINAL LIQUIDATION OF CUSTOMS ENTRY FOR YEAR OR MORE AND THUS WOULD CREATE GREAT UNCERTAINTY FOR TRADE, TREASURY HAS ACCEDED TO BRAZILIAN REQUEST AND NOT REPEAT NOT GIVEN SERIOUS CONSIDERATION TO THIS METHOD.

3. IN ADMINISTERING THE MULTIPLE RATE SYSTEM, TREASURY HAS INITIALLY DIVIDED BRAZILIAN FIRMS INTO TWO CATEGORIES:

(A) THOSE WHICH EXPORT MORE THAN 40 PERCENT OF THEIR PRODUCTION; THESE WILL BE SUBJECT TO A DUTY OF 4.8 PERCENT, WHICH IS MAXIMUM SUBSIDY ENJOYED BY ANY FIRM IN THIS GROUP. TREASURY ANALYSIS SHOWS THAT 76 PERCENT OF BRAZILIAN SHOE EXPORTS WOULD FALL IN THIS CATEGORY.

(B) THOSE WHICH EXPORT LESS THAN 40 PERCENT OF THEIR PRODUCTION; THESE FIRMS WILL BE CHARGED 12.3 PERCENT DUTY, WHICH IS MAXIMUM SUBSIDY IN THEIR GROUP.

FURTHER, FOR FIRMS WHICH ESTABLISH THAT THEY RECEIVE LESS SUBSIDY THAN MAXIMUM RATE (4.8 PERCENT OR 12.3 PERCENT) IN THEIR RESPECTIVE CATEGORIES, TREASURY WILL INSTRUCT CUSTOMS TO IMPOSE A COUNTERVAILING DUTY EQUAL TO LOWER FIGURE, I.E. THAT WHICH REPRESENTS ACTUAL AMOUNT OF SUBSIDY RECEIVED BY PARTICULAR FIRM. REQUEST FOR CONFIDENTIAL

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LOWERING OF DUTY FROM ANY PARTICULAR FIRM COULD BE PROCESSED VERY RAPIDLY.

4. COOPERATION IN PROVIDING INFORMATION WOULD BE NECESSARY FROM GOB AND BRAZILIAN EXPORTERS IN ORDER TO MAKE SYSTEM FUNCTION PROPERLY. ABSENCE OF SUCH COOPERATION WOULD OBLIGE TREASURY TO APPLY HIGHER (I.E. MAXIMUM) RATE THAN WOULD OTHERWISE BE THE CASE.

5. CALCULATIONS USED IN ABOVE APPROACH ARE BASED UPON DATA FOR TAX YEAR 1973. NEW ANALYSES WILL BE MADE WHEN NEW DATA FOR 1974 BECOME AVAILABLE AND/OR TO REFLECT CHANGES IN SUBSIDY SYSTEM.

6. FULL DETAILS OF ADMINISTERING SYSTEM WILL BE SENT TO EMBASSY AND GOB AFTER PUBLICATION OF ORDER.

7. LETTER FROM SECRETARY SIMON TO FINANCE MINISTER SIMONSEN NOW IN CLEARANCE PROCESS. WE HOPE TO TRANSMIT IT TO BRASILIA BY TELEGRAM ON WEDNESDAY, SEPTEMBER 4.

FOLLOWING SCENARIO AGREED TO (BRASILIA 5623) WE WOULD HAVE YOU IMMEDIATELY NOTIFY SILVEIRA ORALLY OF DECISION AND DELIVER LETTER TO SIMONSEN ALMOST SIMULTANEOUSLY. TREASURY IS NOW PLANNING TO MAKE ANNOUNCEMENT ON BRAZIL (AND OTHER PENDING CASES IF POSSIBLE) EARLY NEXT WEEK FOLLOWING THIS TENTATIVE SCHEDULE: (A) INFORM ALL INTERESTED PARTIES IN WASHINGTON (CONGRESS, BRAZILIAN EMBASSY, LAWYERS) ABOUT DECISION ON FRIDAY, SEPTEMBER 6; (B) MAKE DECISION PUBLIC ON MONDAY NOON, SEPTEMBER 9; (C) PUBLISH ORDER IN FEDERAL REGISTER ON TUESDAY, SEPTEMBER 10, AND (D) PUBLISH ORDER IN CUSTOMS BULLETIN ABOUT TEN DAYS LATER. DUTY WILL BECOME EFFECTIVE 30 DAYS AFTER PUBLICATION IN CUSTOMS BULLETIN.

8. DEPT. BELIEVES FORMULA APPROVED IS BEST POSSIBLE SOLUTION GIVEN CONSTRAINTS WITHIN WHICH TREASURY MUST OPERATE IN THESE CASES. WHILE WE REALIZE THIS WILL BE DIFFICULT DECISION TO PRESENT TO BRAZILIANS, WE BELIEVE LOGIC UNDERLYING IT, THE FACT THAT OVERALL IMPACT WILL BE LESS THAN BRAZILIANS HAD FEARED, WILLINGNESS OF
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TREASURY TO USE WHAT FLEXIBILITY IT HAS TO ACCOMMODATE GOB VIEWS IN AMELIORATING HARDSHIP CAUSED BRAZIL, AND FACT THAT SYSTEM OPEN FOR BRAZILIAN FIRMS TO REDUCE DEGREE OF COUNTERVAILING DUTY, ALL SHOULD HELP REDUCE EXPECTED NEGATIVE REACTION TO THIS ACTION. INGERSOLL

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: FOOTWEAR, FOREIGN POLICY POSITION, COUNTERVAILING DUTIES
Control Number: n/a
Copy: SINGLE
Draft Date: 04 SEP 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: shawdg
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974STATE193339
Document Source: CORE
Document Unique ID: 00
Drafter: JSLATTERY:SC
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D740244-0163
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740975/aaaaclso.tel
Line Count: 159
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN ARA
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: BRASILIA 6636
Review Action: RELEASED, APPROVED
Review Authority: shawdg
Review Comment: n/a
Review Content Flags:
Review Date: 12 SEP 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <12 SEP 2002 by rowelle0>; APPROVED <26 FEB 2003 by shawdg>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: COUNTERVAILING DUTY CASE
TAGS: ETRD, EFIN, BR, US
To: BRASILIA
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005